

of the Commissioner are supported by substantial evidence and were reached through application of the correct legal standards. *See Coffman v. Bowen*, 829 F.2d 514, 517 (4th Cir. 1987). Substantial evidence has been defined as “evidence which a reasoning mind would accept as sufficient to support a particular conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.” *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966). ““If there is evidence to justify a refusal to direct a verdict were the case before a jury, then there is “substantial evidence.””” *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990) (quoting *Laws*, 368 F.2d at 642).

The record shows that Grimes filed his applications for DIB and SSI on or about January 31, 2002, alleging disability as of April 17, 2001, based on back and shoulder pain, obesity, stomach problems and anxiety. (Record, (“R.”), at 50-52, 57, 72, 183-89.) Grimes’s claims were denied both initially and on reconsideration. (R. at 32-36, 37, 40-42, 191-93, 195-97.) Grimes requested a hearing before an administrative law judge, (“ALJ”), (R. at 43), and a hearing was held on July 31, 2003, at which Grimes was represented by counsel. (R. at 201-32.)

By decision dated October 17, 2003, the ALJ denied Grimes’s claims. (R. at 13-20.) The ALJ found that Grimes met the disability insured status requirements of the Act through the date of his decision. (R. at 19.) The ALJ also found that Grimes had not engaged in substantial gainful activity since the alleged onset of his disability. (R. at 19.) The ALJ determined that Grimes had severe impairments, namely degenerative joint disease, bursitis, obesity, borderline intellectual functioning and an anxiety disorder, but he found that these impairments did not meet or equal an

impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 16, 19.) The ALJ found that Grimes's allegations regarding his limitations were not totally credible. (R. at 19.) The ALJ determined that Grimes had the residual functional capacity to perform simple, unskilled light work¹ that allowed frequent postural changes. (R. at 19.) Based on this residual functional capacity, the ALJ determined that Grimes could not perform his past relevant work. (R. at 19.) Based on his age, education, work experience and residual functional capacity and the testimony of a vocational expert, the ALJ found that light jobs existed in the national economy that Grimes could perform. (R. at 20.) Thus, the ALJ determined that Grimes was not disabled as defined by the Act and was not eligible for benefits. (R. at 20.) *See* 20 C.F.R. §§ 404.1520(g), 416.920(g) (2004).

After the ALJ issued his opinion, Grimes pursued his administrative appeals, (R. at 9), but the Appeals Council denied his request for review. (R. at 5-8.) Grimes then filed this action seeking review of the ALJ's unfavorable decision, which now stands as the Commissioner's final decision. *See* 20 C.F.R. §§ 404.981, 416.1481 (2004.) The case is before this court on the Commissioner's motion for summary judgment filed February 10, 2005.

II. Facts

Grimes was born in 1959, (R. at 50, 204), which classifies him as a "younger

¹Light work involves lifting items weighing up to 20 pounds at a time with frequent lifting or carrying of items weighing up to 10 pounds. If someone can do light work, he also can do sedentary work. *See* 20 C.F.R. §§ 404.1567(b), 416.967(b) (2004).

person” under 20 C.F.R. §§ 404.1563(c), 416.963(c) (2004). Grimes has past work experience as an asbestos supervisor and a construction laborer. (R. at 58.) He completed the eighth grade² in school and obtained his general equivalency development, (“GED”), diploma. (R. at 205.)

Grimes testified at his hearing that he injured his back in 1994 in a work-related scaffolding accident. (R. at 209, 211-12.) He stated that he had a colonoscopy for rectal bleeding in 1999 and that within a week of that procedure he was laid off from work. (R. at 214.) Grimes testified that his medications slowed him down and that his sister did the household chores and helped him with his shoes and socks. (R. at 220.) He stated that he was in pain every minute of his life. (R. at 225.) Grimes stated that his pain and the fact that he lost his job, his home, his car and everything, “all of it combined,” interfered with his concentration. (R. at 226.) He stated that he was 5'9" tall and that he weighed 275 pounds. (R. at 227.) He said that he had gained weight because he could not exercise as much as he previously did. (R. at 228.) Grimes stated that he could lift and carry objects weighing five pounds from room to room. (R. at 225.) He stated that he could stand for 30 minutes without interruption and sit for 90 minutes without interruption. (R. at 225.)

Cathy Sanders, a vocational expert, also testified at Grimes’s hearing. (R. at 229-30.) The ALJ asked Sanders to assume an individual of Grimes’s age, education and work experience who could perform simple, unskilled light work and who would require frequent postural changes. (R. at 230.) Sanders stated that light jobs existed

²Grimes noted on his Disability Report that he completed the tenth grade in school, (R. at 63), however, he testified at his hearing that he completed the eighth grade. (R. at 205.)

in the national economy that this individual could perform, including jobs as a cashier, a food checker, a parking lot attendant, a gate guard and a machine feeder. (R. at 230.) Sanders stated that there would be no jobs available should the person experience pain frequently, which in turn, affected his ability to concentrate or to persist at tasks. (R. at 230.)

In rendering his decision, the ALJ reviewed records from Dr. Kimberly Shelton, M.D.; Moses Cone Health System; Dr. Edward J. Rhoads, M.D.; Dr. Leonard Polanco, M.D.; Elizabeth Anten, Psy.D., a state agency psychological consultant; Dr. Sankar Kumar, M.D., a state agency physician; and B. Wayne Lanthorn, Ph.D., a licensed clinical psychologist.

On September 29, 1999, Grimes sought treatment from Dr. Kimberly Shelton, M.D., for complaints of chronic low back pain secondary to a back injury. (R. at 106-07.) He reported progressive back pain, numbness and paresthesias radiating to his legs bilaterally. (R. at 106.) Grimes's blood pressure reading was 130/90 and he weighed 242 pounds. (R. at 106.) Dr. Shelton reported that Grimes's gait was normal, his sensation was intact and his muscle strength was 5/5 in all major muscle groups. (R. at 107.) On October 20, 1999, Grimes was seen for removal of skin tags. (R. at 104.) His blood pressure reading was 138/100. (R. at 104.) Grimes reported that he was very active on the job. (R. at 104.) On October 21, 1999, it was reported that Grimes was using medications in greater quantities than prescribed. (R. at 103.) In November 1999, Grimes's blood pressure reading was 132/91. (R. at 101.) On December 29, 1999, Grimes complained of shoulder discomfort and stated that he wanted to lose weight. (R. at 99.) Grimes had good range of motion. (R. at 99.) On

February 28, 2000, Grimes blood pressure reading was 120/84. (R. at 98.) Grimes did not keep his April, August or December 2000 appointments. (R. at 97-98.)

On January 8, 2001, Grimes complained of headaches and neck and back pain after a ladder landed on his head. (R. at 94.) His blood pressure reading was 132/90. (R. at 94.) Examination of his back showed paravertebral muscle tenderness. (R. at 95.) Grimes next contacted Dr. Shelton's office on February 4, 2002, requesting prescriptions for medication. (R. at 93.) On February 19, 2002, Grimes's examination was normal expect for a complaint of pain on palpation over his shoulder and with range of motion. (R. at 91-92.) On May 20, 2002, Grimes's examination was normal. (R. at 88-89.) He weighed 244 pounds. (R. at 88.) Grimes's request for early refills of his medications in July 2002 was denied. (R. at 87.) On December 22, 2002, Grimes's examination was normal. (R. at 179-80.)

On April 4, 2001, Grimes underwent a colonoscopy at Moses Cone Health System. (R. at 123-24.) The colonoscopy was normal expect for small nonbleeding internal hemorrhoids. (R. at 123.) An MRI was performed on March 25, 2002, of Grimes's lumbar spine, which showed no significant abnormality. (R. at 122.) The MRI showed mild degenerative facet joint arthritis at the L5-S1 level and minimal desiccation of the L1-2 disc without herniation or bulging. (R. at 122.)

On May 1, 2002, Dr. Edward J. Rhoads, M.D., evaluated Grimes at the request of Disability Determination Services. (R. at 126-28.) Grimes stated that he was unable to work due to back pain, right shoulder pain, poor concentration and anxiety. (R. at 128.) Dr. Rhoads reported that Grimes was neatly groomed and dressed and pleasant,

cooperative and polite. (R. at 127.) Dr. Rhoads noted that Grimes seemed a little passive, but did not have a history of passivity. (R. at 127.) He reported that Grimes was mainly focused on his back pain. (R. at 127.) Dr. Rhoads described Grimes's affect as one of mild depression, mild psychomotor retardation and moderate anxiety. (R. at 128.) Dr. Rhoads reported that Grimes's judgment was good and that his insight was poor. (R. at 128.) Dr. Rhoads diagnosed a generalized anxiety disorder and indicated that Grimes had a Global Assessment of Functioning, ("GAF"), score of 45.³ (R. at 128.)

On June 28, 2002, Dr. Leonard Polanco, M.D., examined Grimes at the request of Disability Determination Services. (R. at 129-32.) Grimes complained of back and shoulder pain, obesity and stomach problems. (R. at 130.) Dr. Polanco reported that Grimes was in no obvious distress and that his gait was normal. (R. at 130.) Grimes's musculoskeletal and neurological examinations were normal, except for mild tenderness to deep palpation over the lumbosacral region. (R. at 131.) Straight leg raising tests were negative. (R. at 131.) Grimes's range of motion of his spine, shoulders, arms, wrists, hands and legs was normal. (R. at 131, 134-35.) Muscle strength, sensation and deep tendon reflexes were normal. (R. at 131.) Grimes's heel-toe walk and heel squatting were normal. (R. at 131.) Dr. Polanco reported that Grimes's hypertension was well-controlled. (R. at 131.) He diagnosed chronic low back pain secondary to degenerative joint disease. (R. at 131.)

³The GAF scale ranges from zero to 100 and "[c]onsider[s] psychological, social, and occupational functioning on a hypothetical continuum of mental health-illness." DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS FOURTH EDITION, ("DSM-IV"), 32 (American Psychiatric Association 1994). A GAF of 41-50 indicates that the individual has "[s]erious symptoms ... OR any serious impairment in social, occupational, or school functioning" DSM-IV at 32.

On July 10, 2002, Elizabeth Anten, Psy.D., a state agency psychological consultant, indicated that Grimes suffered from an affective disorder and an anxiety-related disorder. (R. at 136-49.) She indicated that Grimes had moderate limitations in his activities of daily living, in maintaining social functioning and in maintaining concentration, persistence or pace. (R. at 146.) This assessment was affirmed by Dr. Giuliana Gage, M.D., a state agency psychiatric consultant, on November 7, 2002. (R. at 148.)

Anten completed a mental assessment indicating that Grimes was moderately limited in his ability to understand, remember and carry out detailed job instructions, to maintain attention and concentration, to perform activities within a schedule, to maintain regular attendance, to be punctual within customary tolerances, to work in coordination with or proximity to others without being distracted by them, to complete a normal workday and work week without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods, to interact appropriately with the general public, to accept instructions and respond appropriately to criticism, to get along with co-workers, to travel in unfamiliar places or use public transportation. (R. at 150-52.) Anten indicated that Grimes was capable of performing simple tasks. (R. at 152.) She also reported that Grimes's symptoms of depression and anxiety may at times interfere with his attention and concentration, attendance and pace. (R. at 152.) This assessment was affirmed by Dr. Gage on November 7, 2002. (R. at 152.)

On July 12, 2002, Dr. Sankar Kumar, M.D., a state agency physician, indicated that Grimes had the residual functional capacity to perform medium work. (R. at 154-

61.) No postural, manipulative, visual, communicative or environmental restrictions were placed on Grimes. (R. at 156-58.)

On April 5, 2003, B. Wayne Lanthorn, Ph.D., a licensed clinical psychologist, evaluated Grimes at the request of Disability Determination Services. (R. at 164-70.) Lanthorn reported that Grimes had a fairly normal affect and mood throughout the evaluation and that he was in no apparent distress. (R. at 164, 166.) Lanthorn found that Grimes was able to concentrate and attend, although he noted that as the session went on, Grimes appeared to become a bit more distracted. (R. at 166.) The Wechsler Adult Intelligence Scale-III, (“WAIS-III”), test was administered, and Grimes obtained a verbal IQ score of 83, a performance IQ score of 77 and a full-scale IQ score of 78. (R. at 167.) Lanthorn diagnosed an anxiety disorder, not otherwise specified (mixed anxiety-depressive disorder) and borderline intellectual functioning. (R. at 169.) He assessed Grimes’s GAF score at 65.⁴ (R. at 169.)

Lanthorn completed a mental assessment indicating that Grimes had a more than satisfactory ability to understand, remember and carry out simple job instructions. (R. at 171-73.) He indicated that Grimes had a satisfactory ability to follow work rules, to relate to co-workers, to deal with the public, to use judgment, to interact with supervisors, to function independently, to understand, remember and carry out complex and detailed instructions, to maintain personal appearance, to behave in an emotionally stable manner, to relate predictably in social situations and to demonstrate

⁴A GAF of 61-70 indicates that the individual has “[s]ome mild symptoms ... OR some difficulty in social, occupational, or school functioning ... , but [is] generally functioning pretty well, has some meaningful interpersonal relationships.” DSM-IV at 32.

reliability. (R. at 171-72.) Lanthorn also indicated that Grimes had a seriously limited, but not precluded, ability to maintain attention and concentration and to understand, remember and carry out complex job instructions. (R. at 171-72.)

III. Analysis

The Commissioner uses a five-step process in evaluating DIB and SSI claims. *See* 20 C.F.R. §§ 404.1520, 416.920 (2004); *see also Heckler v. Campbell*, 461 U.S. 458, 460-62 (1983); *Hall v. Harris*, 658 F.2d 260, 264-65 (4th Cir. 1981). This process requires the Commissioner to consider, in order, whether a claimant 1) is working; 2) has a severe impairment; 3) has an impairment that meets or equals the requirements of a listed impairment; 4) can return to his past relevant work; and 5) if not, whether he can perform other work. *See* 20 C.F.R. §§ 404.1520, 416.920 (2004). If the Commissioner finds conclusively that a claimant is or is not disabled at any point in this process, review does not proceed to the next step. *See* 20 C.F.R. §§ 404.1520(a), 416.920(a) (2004).

Under this analysis, a claimant has the initial burden of showing that he is unable to return to his past relevant work because of his impairments. Once the claimant establishes a prima facie case of disability, the burden shifts to the Commissioner. To satisfy this burden, the Commissioner must then establish that the claimant has the residual functional capacity, considering the claimant's age, education, work experience and impairments, to perform alternative jobs that exist in the national economy. *See* 42 U.S.C.A. §§ 423(d)(2)(A), 1382c(a)(3)(A)-(B) (West 2003); *McLain v. Schweiker*, 715 F.2d 866, 868-69 (4th Cir. 1983); *Hall*, 658 F.2d at 264-65;

Wilson v. Califano, 617 F.2d 1050, 1053 (4th Cir. 1980).

By decision dated October 17, 2003, the ALJ denied Grimes's claims. (R. at 13-20.) The ALJ determined that Grimes had severe impairments, namely degenerative joint disease, bursitis, obesity, borderline intellectual functioning and an anxiety disorder, but he found that these impairments did not meet or equal an impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 16, 19.) The ALJ found that Grimes's allegations regarding his limitations were not totally credible. (R. at 19.) The ALJ determined that Grimes had the residual functional capacity to perform simple, unskilled light work that allowed frequent postural changes. (R. at 19.) Based on this residual functional capacity, the ALJ determined that Grimes could not perform his past relevant work. (R. at 19.) Based on his age, education, work experience and residual functional capacity and the testimony of a vocational expert, the ALJ found that light jobs existed in the national economy that Grimes could perform. (R. at 20.) Thus, the ALJ determined that Grimes was not disabled as defined by the Act and was not eligible for benefits. (R. at 20.) *See* 20 C.F.R. §§ 404.1520(g), 416.920(g) (2004).

In his brief, Grimes argues that there is not substantial evidence to support the ALJ's finding that he could perform simple, unskilled light work that allowed frequent postural changes. (Brief In Support Of Plaintiff, ("Plaintiff's Brief"), at 5-7.)

As stated above, the court's function in this case is limited to determining whether substantial evidence exists in the record to support the ALJ's findings. This court must not weigh the evidence, as this court lacks authority to substitute its

judgment for that of the Commissioner, provided her decision is supported by substantial evidence. *See Hays*, 907 F.2d at 1456. In determining whether substantial evidence supports the Commissioner's decision, the court also must consider whether the ALJ analyzed all of the relevant evidence and whether the ALJ sufficiently explained his findings and his rationale in crediting evidence. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439-40 (4th Cir. 1997).

Thus, it is the ALJ's responsibility to weigh the evidence, including the medical evidence, in order to resolve any conflicts which might appear therein. *See Hays*, 907 F.2d at 1456; *Taylor v. Weinberger*, 528 F.2d 1153, 1156 (4th Cir. 1975). Furthermore, while an ALJ may not reject medical evidence for no reason or for the wrong reason, *see King v. Califano*, 615 F.2d 1018, 1020 (4th Cir. 1980), an ALJ may, under the regulations, assign no or little weight to a medical opinion, even one from a treating source, based on the factors set forth at 20 C.F.R. §§ 404.1527(d), 416.927(d), if he sufficiently explains his rationale and if the record supports his findings.

Grimes argues that substantial evidence does not support the ALJ's finding with regard to his residual functional capacity. The ALJ found that Grimes could perform simple, unskilled light work that allowed frequent postural changes. (R. at 19.) Based upon my review of the record, I find that substantial evidence exists to support the ALJ's finding with regard to Grimes's physical residual functional capacity. The record indicates that Grimes's physical examinations were normal, his sensation was intact and his muscle strength was 5/5 in all major muscle groups. (R. at 106-07, 131, 134-35.) Dr. Shelton did not report any change in those findings thereafter. (R. at 87-

122, 175-80.) In addition, an MRI of Grimes's lumbar spine showed no significant abnormality. (R. at 122.) Furthermore, Grimes's weight was 242 on examination on his first visit to Dr. Shelton, he reported being very active at work at that weight and his weight stayed fairly consistent on subsequent visits. (R. at 88, 91, 94, 104, 106, 177.) In February 2002, examination of Grimes's shoulder was normal as well as subsequent visits until August 14, 2003, when he complained of right hand pain after falling. It was noted on examination that Grimes's hand was tender to palpation, however, there is no indication in the record that Grimes's hand injury resulted in an impairment which imposed functional limitations. (R. at 175-80.) Based on this, I find that substantial evidence exists to support the ALJ's finding with regard to Grimes's physical residual functional capacity.

I do not, however, find that substantial evidence exists to support the ALJ's finding regarding Grimes's mental residual functional capacity. The ALJ found that Grimes could perform simple, unskilled work. (R. at 19.) The ALJ stated that he relied on the assessments of Lanthorn and the state agency psychologist in making this determination. (R. at 17.) Anten assessed that Grimes was moderately limited in various categories, including activities of daily living, maintaining social functioning and maintaining concentration, persistence or pace. (R. at 146, 150-52.) She also indicated that Grimes's symptoms of depression and anxiety may at times interfere with his ability for attention and concentration, attendance and pace. (R. at 152.) Lanthorn also indicated that Grimes was seriously limited, but not precluded, in his ability to maintain attention and concentration. (R. at 171-72.) Therefore, the evidence the ALJ relied upon does not support his finding. Furthermore, these limitations were not posed to the vocational expert. Thus, I also cannot find that substantial evidence exists to

support the ALJ's finding that a significant number of jobs exist that Grimes could perform.

IV. Conclusion

For the foregoing reasons, the Commissioner's motion for summary judgment will be denied, the Commissioner's decision to deny benefits is vacated, and the case is remanded for further consideration of Grimes's mental impairments and their impact on his work-related abilities.

DATED: This 28th day of February, 2005.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE